(9)

ANNEXURE
PAGE No. 2.

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

MISC. APPEAL [C] No.: - 207 / 2007.

Division Bench
D.B.

APPELLANTS: -
[Claimants]

1. **Smt. Prem Lata,** Age- 25 Yrs,
W/O Late Goverdhan Barik,
{By Caste- Sawra}

2. **Hiradhar Barik,** Age-10 Yrs.[Minor]
S/O Late Goverdhan Barik,

3. **Ku. Dewaki,** Age-08 Yrs.[Minor]
D/O Late Goverdhan Barik,

4. **Bramha,** Age-60 Yrs.
S/O Shri Jaidev Barik,

Minor appellant no.02 & 03 are represented by the appellant no.01,Smt. Prem Lata, who is the Mother of the appellant no.02 & 03.

All the above are R/O Village-Jamdalkha, P.S. Baramkela, Tahsil & Distt. Raigarh, C.G. At Present r/o Village- Banhardhih, P.S. & Tahsil- Saraipali, Distt. Mahasamund[C.G]

: V E R S U S:

RESPONDENTS: -
(Non-applicants)

1. **Aazad Khan,**
S/O Shakir Khan,
R/O Muktibada, Shivarpur,
Bulandshaher, P.S.,Tahsil&
Distt.Bulandshaher,
(Uttar Pradesh State)

[Driver of the Truck No. H.R. 38/R-2441]

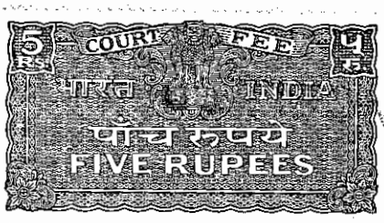
2. **Virendra Singh,**
S/O R.P. Singh,
R/O Vazirpur, Village- Delhi Pradesh.
Delhi-Pradesh.

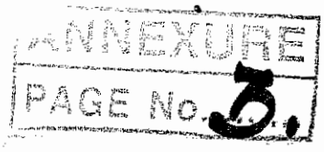
[Owner of the Truck No. H.R. 38/R-2441]

3. **The Oriental Insurance Com. Ltd.**
Divisional Office at Madina Building,
Jail Road, Raipur,
Distt. Raipur [C.G.]

[Ins. Com. of the Truck No. H.R. 38/R-2441]

(5)





-: MEMO OF MISC.APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLE ACT. : -

(15)

HIGH COURT OF CHHATTISGARH : BILASPUR

Division Bench

Coram : Hon'ble Shri H.L. Dattu, CJ &
Hon'ble Shri V.K. Shrivastava, J

MISC. APPEAL (C) NO. 207 OF 2007

APPELLANTS: Smt. Prem Lata and others

Versus

RESPONDENTS: Aazad Khan and others.

Present : Shri J.A. Lohani, counsel for the appellants.
None for respondents.

ORAL ORDER

(Passed on 15th February, 2007)

The following oral order of the Court was passed by Vijay Kumar Shrivastava, J.

This is an appeal filed by the claimants/appellants for enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988 (henceforth, "the Act, 1988") against the award dated 29/09/2006 passed by II Additional Motor Accident Claims Tribunal, Mahasamund (henceforth, "the Tribunal") in Claim Case No. 103/2006, whereby they have been awarded compensation of Rs.4,41,000/-.

2) The factual matrix of the case, in brief, is that on 13/04/2006 at about 09.30 a.m when Goverdhan Barik (since deceased) along with Vishbnu Bhoi and other passengers was standing by the side of road, respondent No.1 driving Truck bearing registration No.H.R.38/R/2441 in a rash and negligent manner hit and dashed the deceased. Deceased sustained injuries and succumbed to those. Appellants, who are legal representatives of deceased Goverdhan Barik, filed an application under Section 166 of the Act, 1988 for grant of compensation against the

(17)

respondents who are driver, owner and insurer of the offending vehicle. Respondents No.1 and 2 remained ex parte whereas respondent No.3 contested the claim.

3) Learned counsel for the appellants contended that learned tribunal erred in recording age of the deceased applying correct multiplier and in recording income of the deceased.

4) So far as age of the deceased is concerned, the Tribunal on the facts and evidence available and adduced by the appellants themselves has recorded age of the deceased 38 years and, therefore, in accordance with Schedule 2 of Section 163-A of the Act, 1988 applied correct multiplier of 16.

5) No document to support income of the deceased has been adduced by the appellants. In absence of documents and other legal evidence learned tribunal did not accept the oral statement of Premlata, wife of the deceased, however, in view of the facts that deceased was doing the work of mason, allowed his earning Rs.3,000/- per month and after making due deduction, assessed dependency by applying multiplier of 16 and hold loss of dependency Rs.3,84,000/- Learned Tribunal further allowed Rs.2,000/- towards funeral expenses, Rs.20,000/- towards loss of consortium, loss of estate Rs.20,000 and Rs.15,000/- towards love and affection. The finding of facts recorded by the Tribunal is not perverse.

(6) We are of the considered view that learned tribunal not only allowed compensation on merit but also on compassionate grounds. The award is just and reasonable and does not call for any interference by this Court. In the result, the appeal being devoid of substance deserves to be dismissed and is accordingly dismissed in limine. No costs.

Sd/-
Chief Justice

Sd/-
V.K.Shrivastava
Judge

Raju